




# MENTAL HEALTH EVALUATIONS

Competency, NGRI, DMH and Preparing for Sentencing  
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# Signs of Mental Health Issues

- Obvious – psychosis, delusions, etc.
- Less obvious – trouble at the jail (frequent trips to SHU), quiet, difficult personality
- Regardless of which it is – you know something is off
- **Do NOT immediately send to DMH for an evaluation**
  - Make an informed and strategic decision about how to proceed

# INVESTIGATION

- Your Client
- Other People
  - *Family*
  - *Friends*
  - *Teachers, coaches, administrators, guidance counselors, school staff*
  - *Medical Providers*
  - *Correctional Officers*
  - *Church Leaders*

# WHAT TO ASK/NECESSARY INFORMATION

- Birth
  - *Complications, prenatal care, in utero exposure to drugs/alcohol, primary caregiver, quality of parents' relationship, etc.*
- Early Childhood
  - *Developmental Milestones – smiling, rolling over, crawling, talking, walking, reading/writing, potty training, school readiness, etc.*
- School Age
  - *School enrollment, attendance and performance, special education, peer relationships, etc.*
- Adolescence
  - *Educational participation, behavioral issues, skills, activities, mentors, etc.*

## ■ General Information

- *Who lived with the client as a child and client's living situation at time of arrest*
- *How many different places/addresses lived*
- *Disciplinary techniques*
- *Abuse and/or neglect*
- *Family history of mental health and/or substance abuse issues*
- *Church/religious involvement*
- *Traumatic events*
  - *death of loved one, parental separation, accident, natural disasters, combat service, etc.*
- *Client history of drug/alcohol use, hospitalizations, mental health treatment*
- *Criminal history*
- *Observed symptoms consistent with mental health issues*

# RECORDS

- Medical
  - *Prenatal, birth, pediatric, adult, etc.*
- Mental health and psychiatric
- Educational
  - *Make sure to specifically request special education records, IEPs, etc.*
- Employment
- Incarceration (jail, prison, DJJ)
- Family court and DSS
- Birth Certificate

# Now What?

- Competency?
- NGRI?
- GBMI?
- Mitigation?

# Sources of Law

## Competency

- SECTION 44-23-410 et seq.
  - *Restoration*
  - *Commitment*

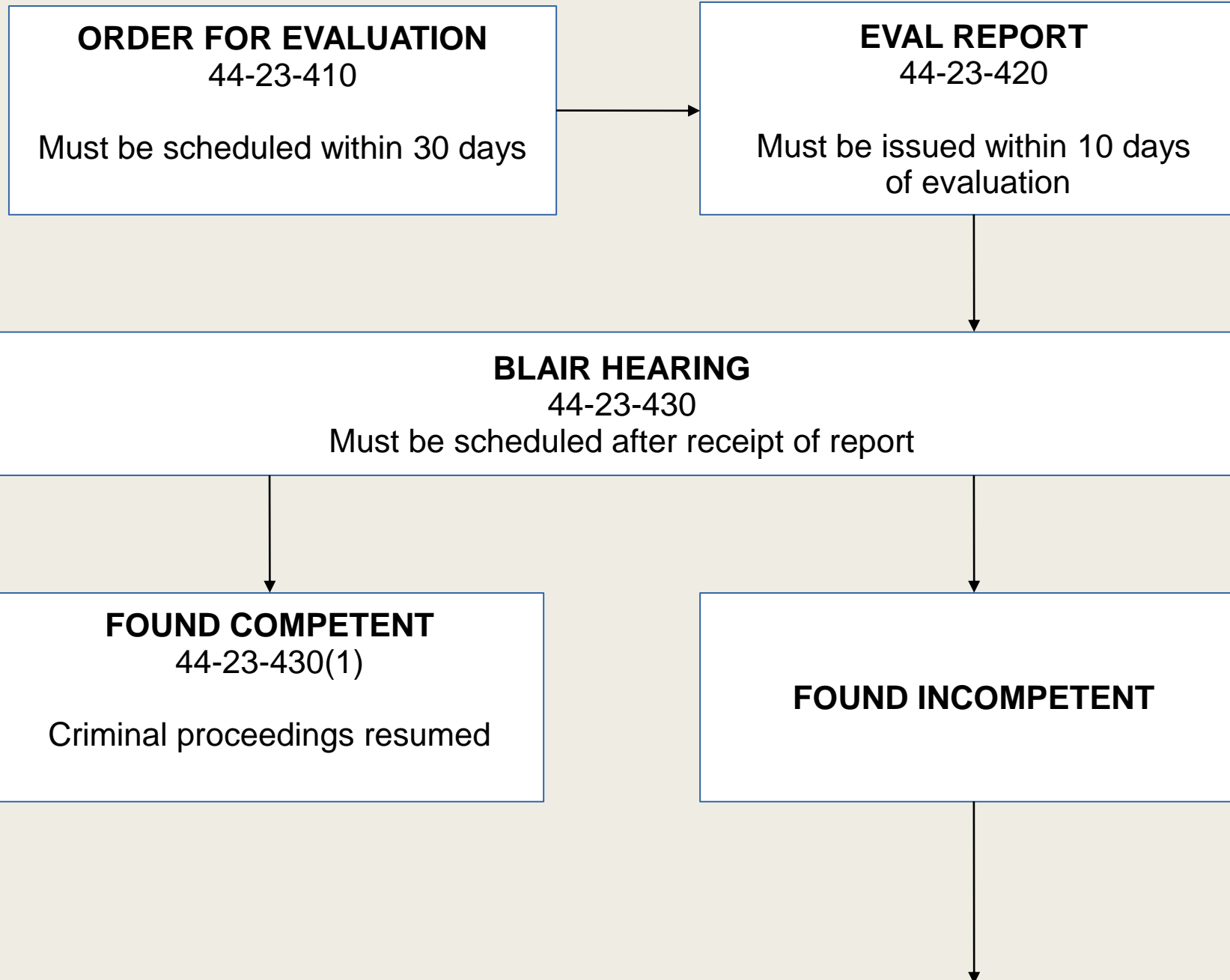
*Dusky v. United States*, 362 U.S. 402 (1960)

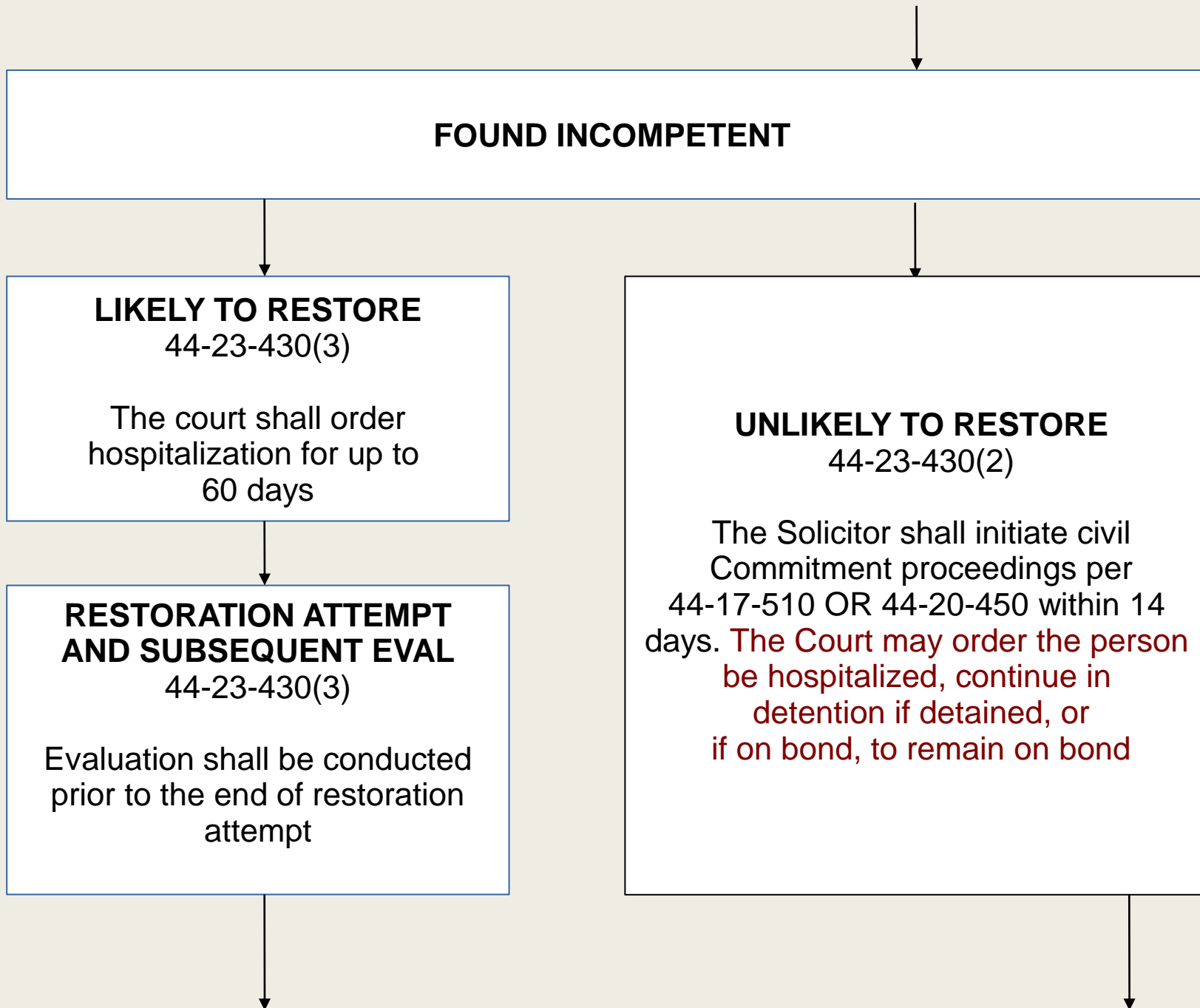
*Jackson v. Indiana*, 406 U.S. 715 (1972)

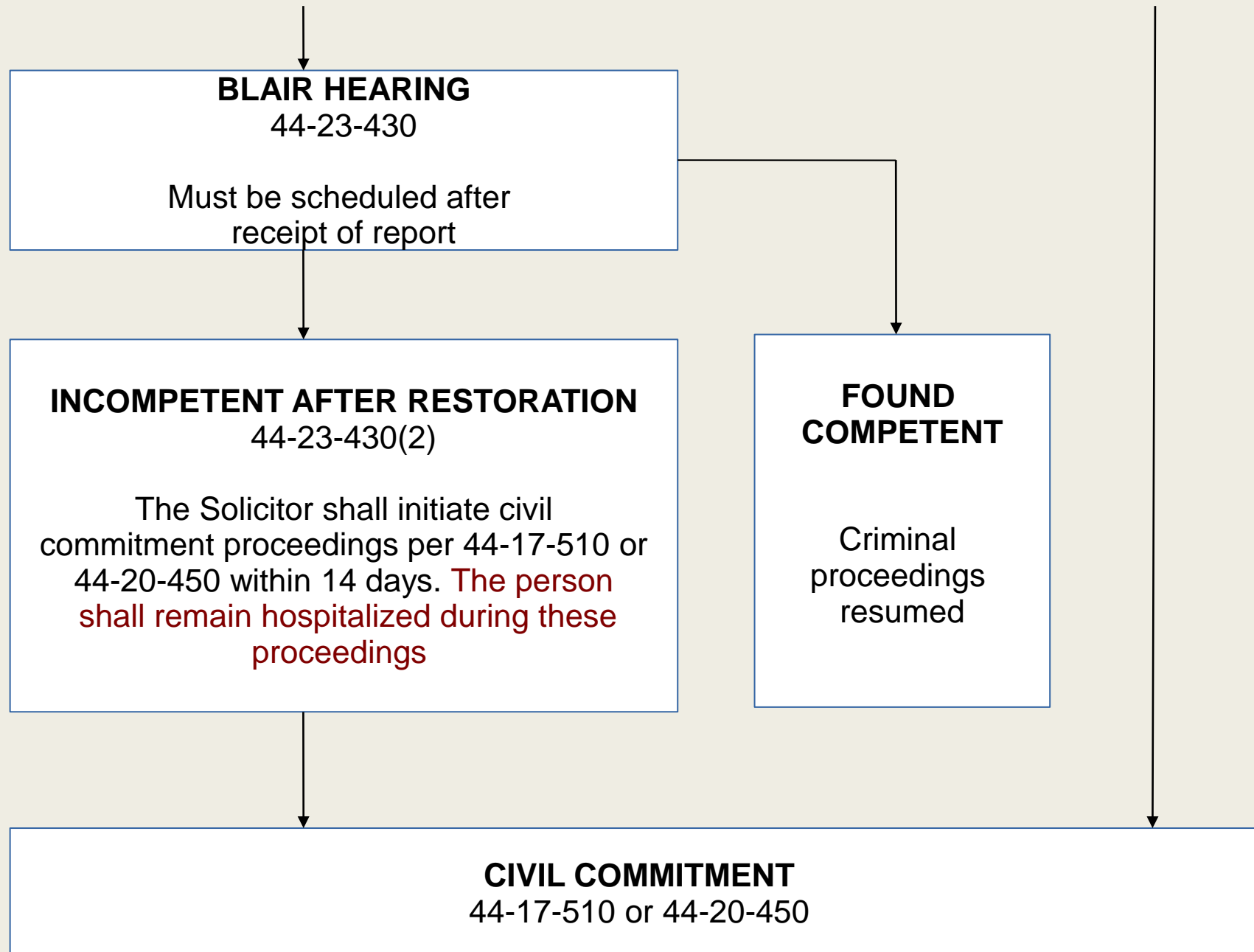
## Responsibility/Capacity

- SECTION 17-24-10 et seq.
  - *NGRI – Criminal Responsibility*
  - *GMBI – Capacity to Conform*









# CRIMINAL RESPONSIBILITY (NGRI)

*At the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.*

NGRI is an affirmative defense

The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.

Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the defense of insanity.

# NGRI Pleas

<https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=939>

Whether a Defendant is legally insane is a question for jury determination (SC Code Ann. 17-24-30). However, nothing prevents a Defendant from waiving a jury trial and submitting the issue to a Circuit Judge for determination. When all evidence clearly indicates that the Defendant meets the criteria for legal insanity, and there is no dispute as to this issue, nothing in our law prevents the parties from consenting to a finding of NGRI and submitting the matter to the Court.

# Capacity to Conform (GBMI)

*At the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.*

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# COMPETENCY TIPS

- Request evaluation as soon as possible
- Keep medical information private
- Notify bond clients of hearing
- Request Blair hearing immediately upon receipt of evaluation results
- Make sure Solicitor's Office files commitment paperwork within 14 days of Blair hearing, must include eval report and Blair order

# INSANITY TIPS

- Request EX PARTE evaluation
- Remember, they are affirmative defenses
  - *Burden of proof is preponderance of evidence*
- GBMI is functionally equivalent to guilty including the possibility of death penalty. Only value is for mitigation.



Client is competent, criminally responsible,  
but definitely mentally ill and/or ID.....



# Tell Your Client's Story

- Trial
  - *GBMI*
  - *Trial Tax*
- Plea - open, recommendation, cap, negotiation?
- Judge
- Use of an expert
- Use of written report/memo
- Witness testimony
- Evidence of the nexus between client's mental health issue and crime
- Video

# REGARDLESS OF YOUR SPECIFIC PLAN YOU MUST....

- Be careful of the double edged sword
  - *ID*
  - *TBI*
  - *Personality disorders*
  - *PTSD*
- Rehabilitation
  - *Humanize with specific stories, examples*
- Release/Treatment Plan
  - *Housing; employment; available services – DMH, DDSN, P&A; inpatient; outpatient, etc.*

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## ■ QUESTIONS?

- *I probably do not have answers, but ask anyway!*